

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
 ) CR-18-00258-EJD  
 PLAINTIFF, )  
 ) SAN JOSE, CALIFORNIA  
 VS. )  
 ) JULY 6, 2022  
 RAMESH "SUNNY" BALWANI, )  
 ) VOLUME 45  
 DEFENDANT. )  
 ) PAGES 7752 - 7766

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TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
BY: JOHN C. BOSTIC  
JEFFREY B. SCHENK  
150 ALMADEN BOULEVARD, SUITE 900  
SAN JOSE, CALIFORNIA 95113  
  
BY: ROBERT S. LEACH  
1301 CLAY STREET, SUITE 340S  
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:  
IRENE L. RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

1        A P P E A R A N C E S: (CONT'D)

2        FOR DEFENDANT BALWANI:    ORRICK, HERRINGTON & SUTCLIFFE LLP  
3                                        BY:    SHAWN ESTRADA  
4                                        THE ORRICK BUILDING  
                                         405 HOWARD STREET  
                                         SAN FRANCISCO, CALIFORNIA 94105

5                                        BY:    JEFFREY COOPERSMITH  
6                                                AARON BRECHER  
                                         701 FIFTH AVENUE, SUITE 5600  
                                         SEATTLE, WASHINGTON 98104

7                                        BY:    STEPHEN CAZARES  
8                                                77 SOUTH FIGUEROA STREET, SUITE 3200  
                                         LOS ANGELES, CALIFORNIA 90017

9                                        BY:    AMY WALSH  
10                                                51 W 52ND STREET  
11                                                NEW YORK, NEW YORK 10019

12        ALSO PRESENT:                OFFICE OF THE U.S. ATTORNEY  
13                                        BY:    MADDI WACHS, PARALEGAL  
                                              SARA SLATTERY, PARALEGAL

14                                        UNITED STATES POSTAL INSPECTION SERVICE  
15                                        BY:    CHRISTOPHER MCCOLLOW

16                                        FEDERAL BUREAU OF INVESTIGATION  
17                                        BY:    MARIO C. SCUSSEL

18                                        UNITED STATES FOOD & DRUG  
19                                                ADMINISTRATION  
20                                        BY:    GEORGE SCAVDIS

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1 SAN JOSE, CALIFORNIA

JULY 6, 2022

2 P R O C E E D I N G S

01:17PM 3 (COURT CONVENED AT 1:17 P.M.)

01:17PM 4 (JURY OUT AT 1:17 P.M.)

01:17PM 5 THE COURT: LET'S GO BACK ON THE RECORD IN THE  
01:17PM 6 RAMESH "SUNNY" BALWANI MATTER. WHY DON'T I JUST GET APPEARANCE  
01:17PM 7 OF COUNSEL FOR THE RECORD, PLEASE.

01:18PM 8 MR. SCHENK: GOOD AFTERNOON, YOUR HONOR.

01:18PM 9 JEFF SCHENK, JOHN BOSTIC, AND ROBERT LEACH ON BEHALF OF  
01:18PM 10 THE UNITED STATES.

01:18PM 11 THE COURT: THANK YOU. GOOD AFTERNOON.

01:18PM 12 MR. COOPERSMITH: GOOD AFTERNOON, YOUR HONOR.

01:18PM 13 JEFF COOPERSMITH FOR MR. BALWANI WHO IS PRESENT.

01:18PM 14 I'M JOINED BY MY COLLEAGUES, AMY WALSH, STEPHEN CAZARES,  
01:18PM 15 AARON BRECHER, AND SHAWN ESTRADA.

01:18PM 16 THE COURT: GOOD AFTERNOON EVERYONE.

01:18PM 17 WE'VE SUMMONED YOU BACK BECAUSE WE HAVE NOTE NUMBER 5 FROM  
01:18PM 18 THE JURY. AND I'LL ASK OUR COURTROOM DEPUTY TO PROVIDE COPIES  
01:18PM 19 OF THE NOTE TO COUNSEL.

01:18PM 20 THE CLERK: (HANDING.)

01:18PM 21 THE COURT: AND I'LL READ THE NOTE. IT INDICATES,  
01:18PM 22 "NEED CLARIFICATION ON COUNT TEN RE: PATIENT E.T.'S LAB BLOOD  
01:18PM 23 TESTS RESULTS ON OR ABOUT MAY 11TH, 2015.

01:18PM 24 "IS THE FAXED TEST RESULT THE ONLY QUALIFICATION FOR  
01:19PM 25 INTERSTATE WIRE FRAUD OR DOES THE CUSTOMER SERVICE CALL THAT

01:19PM 1 MAY HAVE BEEN MADE BETWEEN CALIFORNIA AND ARIZONA QUALIFY THIS  
01:19PM 2 INTERACTION AS," IT READS, "INTRASTATE WIRE FRAUD?"  
01:19PM 3 AND IT'S SIGNED BY A JUROR.  
01:19PM 4 COUNSEL, I'LL LET YOU LOOK AT THIS AND DISCUSS WITH YOUR  
01:19PM 5 TEAMS APPROPRIATE RESPONSES.  
01:19PM 6 DO YOU WANT SOME TIME TO DO THIS? SHOULD I STEP DOWN?  
01:19PM 7 I'M HAPPY TO STAY ON THE BENCH IF YOU WANT TO WORD SMITH  
01:19PM 8 SOMETHING.  
01:19PM 9 MR. SCHENK: I THINK ABOUT FIVE MINUTES.  
01:19PM 10 THE COURT: DOES THAT WORK FOR YOU, MR. COOPERSMITH?  
01:19PM 11 MR. COOPERSMITH: YES, YOUR HONOR.  
01:19PM 12 THE COURT: SURE. LET'S GIVE YOU SOME TIME TO LOOK  
01:19PM 13 AT THIS, AND I'LL COME BACK IN ABOUT SEVEN TO TEN MINUTES.  
01:19PM 14 OKAY. THANK YOU.  
01:20PM 15 (RECESS FROM 1:20 P.M. UNTIL 1:32 P.M.)  
01:32PM 16 THE COURT: ALL RIGHT. THANK YOU.  
01:32PM 17 WE'RE BACK ON THE RECORD. ALL PARTIES PREVIOUSLY PRESENT  
01:32PM 18 ARE PRESENT ONCE AGAIN.  
01:32PM 19 COUNSEL, DO YOU WANT TO APPROACH AND SHARE ANY THOUGHTS  
01:32PM 20 THAT YOU HAVE ABOUT RESPONSE TO THE QUESTION?  
01:32PM 21 MR. COOPERSMITH: THANK YOU, YOUR HONOR.  
01:32PM 22 THE COURT: MR. COOPERSMITH.  
01:32PM 23 MR. COOPERSMITH: DURING THE BRIEF RECESS WE TYPED  
01:32PM 24 UP A PROPOSED RESPONSE. WE'VE SHARED IT WITH THE GOVERNMENT,  
01:32PM 25 AND I CAN HAND IT UP.

01:32PM 1 THE COURT: OKAY. SURE. IS THERE ONE RESPONSE OR  
01:32PM 2 ARE THERE COMPETING RESPONSES?

01:32PM 3 MR. SCHENK: YOUR HONOR, THE GOVERNMENT HAS A  
01:32PM 4 DIFFERENT VIEW.

01:32PM 5 THE COURT: SURE. WHY DON'T I LOOK AT BOTH OF THEM,  
01:32PM 6 AND THEN I CAN HEAR FROM YOU.

01:33PM 7 MR. SCHENK: WE DON'T HAVE ANYTHING PRINTED.

01:33PM 8 THE COURT: OH, I'M SORRY.

01:33PM 9 MR. COOPERSMITH.

01:33PM 10 MR. COOPERSMITH: WE THOUGHT WHAT WE HANDED UP IS  
01:33PM 11 CONSISTENT WITH INSTRUCTION NUMBER 20, AND WE THINK IT GIVES  
01:33PM 12 THEM THE GUIDANCE THAT THEY NEED ON THAT PARTICULAR COUNT.

01:33PM 13 (PAUSE IN PROCEEDINGS.)

01:33PM 14 THE COURT: MR. SCHENK.

01:33PM 15 MR. SCHENK: YOUR HONOR, THE GOVERNMENT HAS A  
01:33PM 16 CONCERN ABOUT HIGHLIGHTING SPECIFIC EVIDENCE IN RESPONSE TO  
01:33PM 17 THIS TYPE OF A QUESTION FROM THE JURY, AND BECAUSE OF THAT WE  
01:33PM 18 WOULD SUGGEST THAT THE COURT POINT THE JURY TO PARAGRAPH 26 OF  
01:33PM 19 THE INDICTMENT.

01:33PM 20 PARAGRAPH 26 IN THE INDICTMENT IS THE PARAGRAPH THAT  
01:33PM 21 CAPTURES THE LANGUAGE REGARDING WIRE FRAUD AND THE SPECIFIC  
01:34PM 22 COUNTS THAT ARE ALLEGED IN THE INDICTMENT.

01:34PM 23 THE GOVERNMENT WOULD BE FINE IF THE COURT EITHER BROUGHT  
01:34PM 24 THE JURY OUT AND READ PARAGRAPH 26 TO THEM OR CUT AND PASTE  
01:34PM 25 PARAGRAPH 26 INTO THE FORM OF ITS RESPONSE.

01:34PM 1 BUT THE PROPOSAL FROM THE DEFENSE REALLY FOCUSES ON  
01:34PM 2 SPECIFIC EVIDENCE IN THE TRIAL IN A WAY THAT CONCERNS THE  
01:34PM 3 GOVERNMENT, AND I THINK WE TEND TO AVOID HIGHLIGHTING SPECIFIC  
01:34PM 4 EVIDENCE IN THAT WAY DURING JURY DELIBERATIONS. AND INSTEAD  
01:34PM 5 IF, FOR INSTANCE, THE JURY HAD THE INDICTMENT, WE WOULD JUST  
01:34PM 6 POINT TO THE INDICTMENT IN AN INSTANCE LIKE THIS. THEY DON'T  
01:34PM 7 HAVE A COPY OF THE INDICTMENT, BUT THEY SEEM TO BE ASKING THE  
01:34PM 8 QUESTION REGARDING THE CHARGING AND THE WAY TO RESPOND TO A  
01:34PM 9 QUESTION REGARDING THE CHARGING IS TO POINT THEM TO THE CHARGES  
01:34PM 10 IN THE CASE.

01:34PM 11 THE COURT: MR. COOPERSMITH.

01:34PM 12 MR. COOPERSMITH: YOUR HONOR, I DON'T AGREE WITH  
01:35PM 13 THAT APPROACH.

01:35PM 14 FIRST OF ALL, THE INSTRUCTION NUMBER 20 LAYS OUT WHAT'S  
01:35PM 15 CHARGED, AND THE VERY SPECIFIC ANSWER TO THE QUESTION IS FOUND  
01:35PM 16 AT LINES 23 AND 24 OF INSTRUCTION NUMBER 20. IT'S PAGE 22 OF  
01:35PM 17 THE INSTRUCTIONS.

01:35PM 18 SO I THINK THAT'S THE APPROPRIATE THING. I THINK GIVING  
01:35PM 19 THEM A SPECIFIC ANSWER, WHICH IS WHAT WE INTENDED IN THE DRAFT  
01:35PM 20 HERE, IS THE RIGHT APPROACH.

01:35PM 21 AS A FALLBACK, I SUPPOSE YOU COULD JUST POINT THEM TO  
01:35PM 22 INSTRUCTION NUMBER 20. BUT IT SEEMS LIKE IT'S BETTER TO GIVE  
01:35PM 23 THEM THE GUIDANCE.

01:35PM 24 AS FOR MR. SCHENK'S SUGGESTION, WE DON'T SUPPORT GIVING  
01:35PM 25 THE JURY THE INDICTMENT OR BRINGING THEM IN OR READING THEM THE

01:35PM 1 INDICTMENT, AND WE THINK, AGAIN, OUR PROPOSAL ADDRESSES THE  
01:35PM 2 VERY SPECIFIC QUESTION THAT THEY'VE ASKED.

01:35PM 3 THE COURT: ALL RIGHT. THANK YOU.  
01:35PM 4 ANYTHING FURTHER?

01:35PM 5 MR. SCHENK: I DON'T HAVE ANY MORE TO ADD TO THE  
01:35PM 6 SUGGESTION ON PARAGRAPH 26.

01:35PM 7 I CERTAINLY THINK IF THE COURT IS NOT INCLINED TO READ OR  
01:35PM 8 PROVIDE PARAGRAPH 26 OF THE INDICTMENT, IT IS BETTER TO POINT  
01:36PM 9 THEM TO JURY INSTRUCTION NUMBER 20 THAN WHAT THE DEFENSE HAS  
01:36PM 10 PROPOSED.

01:36PM 11 THE WRITTEN RESPONSE OF THE DEFENSE IS NOT THE APPROACH  
01:36PM 12 THAT THE COURT SHOULD ADOPT, BUT INSTEAD, IT SHOULD PROVIDE THE  
01:36PM 13 INDICTMENT OR IT SHOULD POINT THEM TO SPECIFIC JURY  
01:36PM 14 INSTRUCTIONS THAT IT HAS ALREADY READ TO THE JURY.

01:36PM 15 THE COURT: ALL RIGHT. THANK YOU.

01:36PM 16 MR. COOPERSMITH: THE ONLY CONCERN, JUST TO QUICKLY  
01:36PM 17 ADD, THE ONLY CONCERN I HAVE ABOUT THAT, AND I DID PRESENT THAT  
01:36PM 18 AS A FALLBACK, BUT THE REASON IT'S A FALLBACK AND NOT OUR  
01:36PM 19 PREFERRED APPROACH, IS THAT PRESUMABLY THE JURY HAS ALREADY  
01:36PM 20 LOOKED AT INSTRUCTION 20, AND IT'S JUST TELLING THEM LOOK AT  
01:36PM 21 THE THING THAT YOU ALREADY HAVE. AND THE PROPOSAL WE MADE GOES  
01:36PM 22 A LITTLE BIT FURTHER AND DOESN'T DO ANYTHING OTHER THAN SAY,  
01:36PM 23 YOU KNOW, THAT IS THE CHARGE. IT'S TOTALLY CONSISTENT WITH THE  
01:36PM 24 INDICTMENT IF YOU LOOK AT COUNT TEN, THAT IS WHAT IS ALLEGED.  
01:36PM 25 IT'S THE TRANSMISSION OF THOSE VERY SPECIFIC PATIENT RESULTS

01:36PM 1 AND NOT A PHONE CALL OR ANY OTHER WIRE THAT MAY HAVE BEEN MADE.

01:37PM 2 THE COURT: WELL, I'LL READ THIS IN THE RECORD.

01:37PM 3 YOUR SUBMISSION READS -- AND WE'LL FILE THIS. I'LL PUT THIS IN

01:37PM 4 THE RECORD, ALSO YOUR WRITTEN SUBMISSION.

01:37PM 5 MR. COOPERSMITH: SURE, YOUR HONOR.

01:37PM 6 THE COURT: THE DEFENSE'S SUBMISSION READS: "PER

01:37PM 7 INSTRUCTION 20, THE ONLY INTERSTATE WIRE ALLEGED IN COUNT TEN

01:37PM 8 OF THE INDICTMENT IS THE WIRE TRANSMISSION OF PATIENT E.T.'S

01:37PM 9 LABORATORY BLOOD TEST RESULTS ON OR ABOUT MAY 11TH, 2015."

01:37PM 10 DID I READ THAT CORRECTLY?

01:37PM 11 MR. COOPERSMITH: YES, YOUR HONOR.

01:37PM 12 THE COURT: THAT -- THIS IN ESSENCE SAYS WHAT THE

01:37PM 13 INSTRUCTION SAYS. IT'S THE SAME, IT SEEMS TO ME, IS WHAT THE

01:37PM 14 INSTRUCTION DOES SAY.

01:37PM 15 MR. COOPERSMITH: WITH ONE EXCEPTION, YOUR HONOR,

01:37PM 16 WHERE IT USES THE WORD "ONLY."

01:37PM 17 THE COURT: CORRECT.

01:37PM 18 MR. COOPERSMITH: RIGHT.

01:37PM 19 THE COURT: BUT COUNT TEN ONLY HAS E.T.'S BLOOD

01:37PM 20 RESULTS.

01:37PM 21 I DON'T THINK THE QUESTION WAS ASKING HOW MANY DIFFERENT

01:37PM 22 ALLEGED VICTIMS, I'LL JUST CALL THEM, BUT PATIENT VICTIMS ARE

01:38PM 23 IN THIS COUNT.

01:38PM 24 IT'S ASKING MORE ABOUT -- IT SEEMS LIKE IT'S ASKING MORE

01:38PM 25 ABOUT IS IT -- I APPRECIATE YOUR THOUGHTS ON THIS. IS IT



01:38PM 1 ASKING ABOUT PHONE CALLS VERSUS FAX OR IS IT ASKING SOMETHING  
01:38PM 2 ABOUT COMMUNICATIONS IN SOME WAY?

01:38PM 3 MR. COOPERSMITH: YES, YOUR HONOR.

01:38PM 4 THE WAY I READ IT, AND I DON'T KNOW IF THERE'S ANOTHER WAY  
01:38PM 5 TO READ IT, IS SIMPLY THAT THEY WANT TO MAKE SURE THAT ON THAT  
01:38PM 6 PARTICULAR ELEMENT OF WIRE FRAUD, THE INTERSTATE WIRE  
01:38PM 7 TRANSMISSION, ARE THEY BOUND TO ONLY CONSIDER THE INTERSTATE  
01:38PM 8 WIRE IN THE FORM OF TRANSMISSION OF PATIENT RESULTS OR CAN THEY  
01:38PM 9 CONSIDER SOME OTHER POSSIBLE WIRE SUCH AS A PHONE CALL TO  
01:38PM 10 CUSTOMER SERVICE OR SOMETHING LIKE THAT, IF ONE WAS MADE.

01:38PM 11 THE COURT: AND LET ME ASK YOU THIS. THE EVIDENCE  
01:38PM 12 AS TO THIS COUNT, IT MAY BE, AS I RECALL THE EVIDENCE, E.T. MAY  
01:38PM 13 HAVE HAD SOME TELEPHONE CONVERSATIONS WITH THERANOS HERE IN  
01:39PM 14 PALO ALTO FROM -- I DON'T KNOW IF THE RECORD REFLECTS -- HER  
01:39PM 15 LOCATION FROM WHERE SHE MADE THE PHONE CALLS. I'M NOT ASKING  
01:39PM 16 YOU TO COMMENT, BUT I RECALL SOME EVIDENCE OF THAT.

01:39PM 17 AND IS IT POSSIBLE THAT THE JURY IS ASKING IF THAT PHONE  
01:39PM 18 CALL WITH CUSTOMER SERVICE CONSTITUTES THE SUFFICIENCY OF THE  
01:39PM 19 EVIDENCE FOR THAT COUNT?

01:39PM 20 MR. COOPERSMITH: YES, YOUR HONOR, I THINK THAT'S  
01:39PM 21 EXACTLY WHAT THEY'RE ASKING.

01:39PM 22 I THINK THEIR MEMORY OF THE TESTIMONY IS THAT THERE WAS  
01:39PM 23 TESTIMONY ABOUT A CUSTOMER SERVICE CALL. I HAVEN'T CHECKED THE  
01:39PM 24 TRANSCRIPT, BUT WHAT IS REALLY IMPORTANT IS HOW THE JURY  
01:39PM 25 REMEMBERS IT, AND APPARENTLY THAT'S WHAT THEY REMEMBER, AND

01:39PM 1 THEY'RE ASKING IF SUCH A CALL COULD MEET THAT PARTICULAR  
01:39PM 2 ELEMENT OF WIRE FRAUD.

01:39PM 3 AND THE ANSWER IS NO I THINK, RIGHT?

01:39PM 4 THE COURT: I DON'T KNOW.

01:39PM 5 MR. SCHENK.

01:39PM 6 MR. SCHENK: YOUR HONOR, I THINK THIS LACK OF  
01:39PM 7 CLARITY IN THE QUESTION AND PARTICULARLY THE USE OF THE WORD  
01:39PM 8 "QUALIFICATION" IN THE QUESTION THAT WE RECEIVED FROM THE JURY  
01:39PM 9 LEAVES ME A LITTLE BIT CONFUSED AS TO EXACTLY WHAT THEY'RE  
01:40PM 10 ASKING FOR. IS IT A SUFFICIENCY OF THE EVIDENCE QUESTION? IS  
01:40PM 11 IT WHAT IS CHARGED QUESTION? BECAUSE I THINK THE COURT'S  
01:40PM 12 MEMORY IS CORRECT. I BELIEVE THIS JURY HEARD TESTIMONY THAT  
01:40PM 13 E.T. CALLED CUSTOMER SERVICE AT THERANOS AND ALSO HAD LAB TESTS  
01:40PM 14 FAXED.

01:40PM 15 AND THE JURY USES THE WORD "QUALIFICATION" IN THIS  
01:40PM 16 QUESTION IN A WAY THAT I THINK LEAVES SOME QUESTION REGARDING  
01:40PM 17 WHAT IT IS THAT IS IN THE AUTHOR OF THIS QUESTION'S MIND, AND  
01:40PM 18 REALLY THAT'S THE REASON WHY WE WOULD HESITATE FROM PROVIDING  
01:40PM 19 AN ANSWER IN THE FORM THAT THE DEFENSE PROPOSED, BUT RATHER  
01:40PM 20 POINT THEM TO EITHER THE LANGUAGE IN THE CHARGING DOCUMENT SO  
01:40PM 21 THAT THEY HAVE WHAT WAS CHARGED IN FRONT OF THEM, OR LANGUAGE  
01:40PM 22 IN PRIOR JURY INSTRUCTIONS READ OR PROVIDED TO THIS JURY.

01:40PM 23 THE COURT: WELL, I'M INCLINED TO START THIS AS A --  
01:40PM 24 I'LL USE THE WORD INCREMENTAL, BUT I DON'T WANT TO GIVE THEM  
01:41PM 25 DIRECTION AND ANSWER A QUESTION THAT THEY HAVEN'T ASKED, AND I

01:41PM 1 DON'T WANT TO GIVE THEM AN ANSWER THAT IS INAPPROPRIATE TO THE  
01:41PM 2 QUESTION THAT IS ASKED. AND I THINK OUR COLLOQUY HERE SUGGESTS  
01:41PM 3 THERE'S A COUPLE OF INTERPRETATIONS ABOUT THEIR QUESTION.

01:41PM 4 I'M INCLINED TO REFER THEM BACK TO JURY INSTRUCTION 20,  
01:41PM 5 AND LINE -- I THINK IT'S 23.

01:41PM 6 I COULD ALSO REFER THEM TO PAGE 23 OF THE INSTRUCTIONS,  
01:41PM 7 LINE 14.

01:41PM 8 MR. COOPERSMITH: YES, YOUR HONOR. TWO THINGS.

01:41PM 9 ONE, I DON'T AGREE THAT THERE'S ANY REALLY AMBIGUITY IN  
01:41PM 10 THE QUESTION. I THINK WHAT IT SEEMS TO BE FAIRLY ASKING IS  
01:41PM 11 WHAT QUALIFIES AS A WIRE TRANSMISSION IN INTERSTATE COMMERCE  
01:41PM 12 FOR PURPOSES OF COUNT TEN.

01:41PM 13 THE CONCERN OR THE VERY SPECIFIC CONCERN THAT THE DEFENSE  
01:41PM 14 HAS IS THAT, I THINK EVERYONE WOULD AGREE WITH THIS, I PRESUME  
01:42PM 15 EVEN THE GOVERNMENT, THAT WE WOULD NOT WANT THE JURY TO REACH A  
01:42PM 16 VERDICT OF CONVICTION ON THAT COUNT BECAUSE THEY THINK YOU  
01:42PM 17 COULD USE SOME OTHER WIRE OTHER THAN WHAT IS ACTUALLY CHARGED  
01:42PM 18 AND WHAT IS IN INSTRUCTION 20. THAT'S A VERY SPECIFIC CONCERN  
01:42PM 19 OUR PROPOSAL IS GOING TO ADDRESS.

01:42PM 20 THAT SAID, I THINK THAT IT WOULD BE APPROPRIATE TO POINT  
01:42PM 21 THEM TO PAGE 23 OF THE INSTRUCTIONS AT LINE 14 AND ALSO -- AND  
01:42PM 22 THIS IS OUR FALLBACK POSITION AS I ARTICULATED EARLIER,  
01:42PM 23 YOUR HONOR, LINES 23 AND 24 OF PAGE 22.

01:42PM 24 THE COURT: I'M NOT SURE, IF I LOOK AT THIS, LINE 14  
01:42PM 25 APPLIES TO THIS COUNT, THOUGH. BUT I'M HAPPY TO HEAR FROM YOU

01:42PM 1 IF THERE IS ANYTHING ELSE THAT -- ANY OTHER PART OF INSTRUCTION  
01:42PM 2 20 THAT YOU THINK SHOULD BE READ.

01:42PM 3 MR. SCHENK: YOUR HONOR, WHEN WE SAY LINE 14, IS  
01:42PM 4 THAT ON PAGE 23 OF THE DOCUMENT, PAGE 24 OF THE ECF STAMP?

01:43PM 5 THE COURT: OH. YOU KNOW, I'M LOOKING AT A NON-ECF  
01:43PM 6 STAMPED COPY. I APOLOGIZE.

01:43PM 7 MR. COOPERSMITH: SAME HERE.

01:43PM 8 THE COURT: I APOLOGIZE. IT'S PAGE 23 OF THE  
01:43PM 9 ORIGINAL DOCUMENT, NOT ECF PAGE, THAT I HAVE.

01:43PM 10 MR. SCHENK: SO THE FOURTH ELEMENT.

01:43PM 11 THE COURT: YES, EXACTLY.

01:43PM 12 MR. SCHENK: SO THEN TO SUMMARIZE, THE PROPOSAL  
01:43PM 13 WOULD BE TO POINT THEM TO JURY INSTRUCTION NUMBER 20 AND IN  
01:43PM 14 PARTICULAR THE FOLLOWING LINES, LINES 23 AND 24 ON PAGE 22 AND  
01:43PM 15 LINES 14 AND 15 ON LINE 23.

01:43PM 16 AND I THINK THE GOVERNMENT WOULD ALSO SUGGEST WE POINT  
01:43PM 17 THEM TO JURY INSTRUCTION NUMBER 14 THAT'S ON PAGE 14.

01:43PM 18 IN THEIR QUESTION THEY USE THIS PHRASE "ON OR ABOUT."

01:43PM 19 THAT'S IN THEIR QUESTION. AND IT SEEMS APPROPRIATE IF  
01:44PM 20 WE'RE POINTING THEM TO INSTRUCTIONS, IT MIGHT BE USEFUL IN  
01:44PM 21 THEIR REVIEW OF -- OR IN RESPONSE TO THIS QUESTION, I WOULD  
01:44PM 22 PROBABLY RECOMMEND POINTING THEM TO THE DEFINITION OF "ON OR  
01:44PM 23 ABOUT" AS WELL.

01:44PM 24 MR. COOPERSMITH: AND THAT LAST SUGGESTION ABOUT  
01:44PM 25 INSTRUCTION 14, WE OPPOSE THAT. WE DON'T THINK THAT'S REALLY

01:44PM 1 PART OF THEIR QUESTION.

01:44PM 2 BUT THE LINES THAT MR. SCHENK IDENTIFIED WOULD BE THE ONES  
01:44PM 3 WE AGREED TO POINT THE JURY TO.

01:44PM 4 AGAIN, IF THE JURY -- IF THE COURT IS NOT INCLINED TO  
01:44PM 5 ACCEPT THE PROPOSAL THAT WE HANDED UP, WHICH IS OUR PREFERRED  
01:44PM 6 COURSE.

01:44PM 7 THE COURT: ALL RIGHT. THANK YOU.

01:44PM 8 LET ME ASK OUR COURTROOM DEPUTY TO WORD SMITH THE LANGUAGE  
01:44PM 9 THAT WAS SUGGESTED IN REGARDS TO JURY INSTRUCTION 20.

01:44PM 10 DOES ONE PARTY WANT TO RECITE THAT AGAIN? DO YOU WANT  
01:44PM 11 TO --

01:44PM 12 MR. SCHENK: SURE.

01:44PM 13 THE COURT: GO RIGHT AHEAD.

01:45PM 14 MR. SCHENK: "PLEASE SEE JURY INSTRUCTION NUMBER 20,  
01:45PM 15 IN PARTICULAR LINES 23 AND 24 ON PAGE 22 AND LINES 14 AND 15 ON  
01:45PM 16 PAGE 23."

01:45PM 17 IS THE COURT GOING TO DECLINE TO POINT THEM TO "ON OR  
01:45PM 18 ABOUT" AT THIS POINT?

01:45PM 19 THE COURT: I THINK SO AT THIS POINT.

01:45PM 20 LET ME ASK YOU, WAS THERE ANY, WAS THERE ANY STIPULATION  
01:45PM 21 OR AGREEMENT OF THE PARTIES IN REGARDS TO WHETHER OR NOT A FAX  
01:45PM 22 IS A WIRE TRANSMISSION?

01:45PM 23 MR. SCHENK: THE INTERSTATE STIPULATIONS COVERED THE  
01:46PM 24 BANK TRANSFERS, NOT THE FAX TRANSMISSIONS.

01:46PM 25 THE COURT: OR THE PHONE CALLS OR ANYTHING ELSE?

01:46PM 1 MR. SCHENK: CORRECT.

01:46PM 2 THE COURT: THANK YOU. THAT'S WHAT I WANTED SOME

01:46PM 3 CLARIFICATION ON.

01:46PM 4 DO YOU AGREE WITH THAT?

01:46PM 5 MR. COOPERSMITH: YES, YOUR HONOR.

01:46PM 6 THE COURT: ALL RIGHT. LET'S -- COULD YOU PRINT

01:46PM 7 THAT OUT AND THEN SHARE COPIES WITH COUNSEL FOR THEIR APPROVAL.

01:46PM 8 DOES THE GOVERNMENT WANT A HARD COPY OF MR. COOPERSMITH'S?

01:46PM 9 MR. SCHENK: WE HAVE ONE.

01:46PM 10 THE COURT: OKAY.

01:47PM 11 MR. SCHENK: THANK YOU.

01:47PM 12 THE CLERK: (HANDING.)

01:47PM 13 MR. SCHENK: THANK YOU, YOUR HONOR. THIS LOOKS

01:47PM 14 ACCEPTABLE.

01:47PM 15 THE COURT: MR. COOPERSMITH.

01:47PM 16 MR. COOPERSMITH: AGAIN, JUST PRESERVING OUR RECORD,

01:47PM 17 WE HAD A DIFFERENT PROPOSAL. THIS WAS OUR FALLBACK PROPOSAL,

01:47PM 18 AND THIS IS ACCEPTABLE.

01:47PM 19 THE COURT: ALL RIGHT. THANK YOU.

01:47PM 20 I'LL SIGN THIS WITH THOSE REPRESENTATIONS, AND WE'LL

01:47PM 21 RETURN THIS TO THE JURY, AND I'LL ASK YOU TO MAKE COPIES OF THE

01:47PM 22 SIGNED AND GIVE THAT TO COUNSEL.

01:47PM 23 THE CLERK: OKAY.

01:47PM 24 THE COURT: ANYTHING ELSE?

01:47PM 25 MR. COOPERSMITH: NO, YOUR HONOR.

01:47PM

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MR. SCHENK: NO, YOUR HONOR.

01:47PM

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THE COURT: OKAY. THANK YOU.

01:47PM

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(RECESS TAKEN PENDING THE DELIBERATIONS OF THE JURY AT

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1:48 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR  
CERTIFICATE NUMBER 8074

DATED: JULY 6, 2022